Supreme Court of the United States

OCTOBER TERM, 1975
No. 75-1360

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION,
KENNETH KROUSE, Administrator
Bureau of Workmen's Compensation,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS

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Appellee, Kenneth Krouse, pursuant to Rule 16 of the Rules of the Supreme Court, moves the final judgment of the Ohio Supreme Court be affirmed on the ground that this appeal presents no substantial federal question.

QUESTION PRESENTED

Whether the interpretation of Section 4123.84, Ohio Revised Code, made by the Supreme Court of Ohio, makes that statute violative of the Equal Protection Clause of the 14th Amendment of the Constitution of the United States.

This case involves the statutory requirements for tolling the statute of limitations for filing a workmen's compensation claim.

STATEMENT

This is a direct appeal from the decision of the Ohio Supreme Court, affirming decisions of the state Court of Appeals and trial court. The trial court decided this case on cross-motions for summary judgment, the only issue being a question of law involving the interpretation of Section 4123.84, Ohio Revised Code.

That statute states in pertinent part:

> "(A) In all cases of injury or death, claims for compensation or benefits for the specific part or parts of the body injured shall be forever barred unless, within two years after the injury or death:
>
> (1) Written notice of the specific part or parts of the body claimed to have been injured has been made to the industrial commission or the bureau of workmen's compensation;
>
> (2) In the event the employer has elected to pay compensation or benefits directly, one of the following has occurred:
>
> (a) Written notice of the specific part or parts of the body claimed to have been injured has been given to the commission or bureau;
>
> (b) Compensation or benefits have been paid or furnished equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, inclusive, and 4123.64 to 4123.67, inclusive, of the Revised Code.
>
> (3) Written notice of death has been given to the commission or bureau.

> (B) As used in division (A)(2)(b) of this section 'benefits' means payment by a self-insured employer to, or on behalf of, and employee for:
>
> (1) A hospital bill;
>
> (2) A medical bill to a licensed physician or hospital;
>
> (3) An orthopedic or prostetic device.
>
> The commission shall provide printed notices quoting in full division (A) of this section, and every employer who is authorized to pay compensation direct to injured employees or dependents of killed employees shall be required to post and maintain at all times one or more of such notices in conspicuous places in the workshop or places of employment."

In this case the parties have stipulated that the appellant received medical treatment from a licensed physician, who was a full time employee of appellee Chrysler Corporation.

The appellant herein maintains that when Chrysler pays a salary to this physician-employee, they are providing a "benefit" to the appellant within the meaning of the statute quoted above.

This appellee denies that the payment of a salary to a company physician, is the payment of "a medical bill" as contemplated by Section 4123.84(B)(2), Ohio Revised Code. Thus, it follows that the payment to this physician-employee of a salary does not operate to toll the statute of limitations contained in Section 4123.84, Ohio Revised Code. The parties agree that Chrysler is entitled to compensate its employee's directly pursuant to Section 4123.84(A)(2), Ohio Revised Code, and the parties additionally agree that the appellant did not otherwise toll the statute of limitations. The appellant did not file a written

claims application with the state until more than two years after the date of his alleged injury.

ARGUMENT

This appellee, Kenneth Krouse, Administrator of the Bureau of Workmen's Compensation is aware of the Motion to Dismiss filed herein by co-appellee Chrysler Corporation, and is, in complete agreement with that Motion to Dismiss. For that reason this appellee will abbreviate its arguments whenever possible in order to avoid repetition.

This appellee wishes to join with the Chrysler Corporation in emphasizing that the Fourteenth Amendment clothes the states with wide discretion in enacting laws which create different classifications, as long as those classifications are not "wholly irrelevant to the achievement of the state's objective". *McGowan vs. Maryland*, 366 U. S. p. 420, (1961).

The appellant's argument in his Jurisdiction Statement is not with the statute, per se, but with the interpretation of the statute made by the Ohio Supreme Court. It has long been held in these cases that the Supreme Court on appeal must accept the state court's construction of the statute and proceed to test the validity on that basis. *Guaranty Trust Co. vs. Blodgett*, 287 U. S. 509, p. 513, (1933); *Kingsley Pictures Corp vs. Regents*, 360 U. S. 684, p. 688, (1959).

The interpretation made by the Ohio Supreme Court, held that payment of a salary to a company physician was not payment of "a medical bill" within the meaning of Section 4123.84 (B)(2), Ohio Revised Code. This construction was reached only after a review of the legislative history of the statute. That history is fully contained in the Motion to Dismiss filed by co-appellee Chrysler Corporation and does not require restatement. Suffice it to say

that the appellant's construction of the statute is contrary to the plain language found therein, and is not supported by the legislative history.

Accepting the interpretation of the statute made by the Ohio Supreme Court, the question presented is whether that view of the statute violates the equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States. This appellee contends that it does not.

The statute does create classifications for employees who work for employers who pay compensation and benefits directly, and those who work for employers who do not pay directly. The appellant worked for Chrysler Corporation, who did pay directly. Under the statute, it is *easier* for the appellant to toll the statute of limitations than it is for an employee of an employer who did not pay directly. Obviously, the appellant does not complain of this classification.

The statute in question, Section 4123.84, Ohio Revised Code, also creates a classification of employees who can toll the statute when their employer pays "a medical bill". Appellant argues that since he received medical treatment from a company physician who was salaried, his employer had no bill to pay, and therefore he was unable to toll the statute of limitations as was the employee who received care from a private physician. Appellant complains that he must notify his employer of an alleged injury by filing a claim.

While it is true that the two classes give notice of a claim to their employer in different ways, neither is favored. The Ohio Workmen's Compensation Law permits any employee, regardless of whether his employer pays compensation and benefits directly, to seek initial treatment from any physician of his choice. Appellant does not

allege that employees within the class who receive treatment from a private physician or within the class treated by a company doctor are treated differently. The appellant's argument is that the mere creation of these two classes is wholly arbitrary, and operates to deny him equal protection of the law.

This appellee, Kenneth Krouse, strenuously disagrees. First, all employees of any self-insuring employer may file a written claims application with the "commission or bureau". This quoted language refers to the Industrial Commission of Ohio or the Bureau of Workmen's Compensation, both of which are state agencies which administer the workmen's compensation system in Ohio. Secondly, an employee of any self-insuring employer may initially go to a private physician of their own choice. If their employer pays for a medical bill submitted from that private physician or reimburses the employee for such a bill, the employee has tolled the statute of limitations.

The reason for this is obvious. Normally, the employer would be under no obligation to pay for such services unless the services were the result of an industrial accident. When such a bill is submitted for payment the employer is put on notice that the employee is alleging an industrial injury. The employer would only accept and pay for those bills which it admitted were valid. If the self-insured employer refused to pay the bill of a private physician, *the statute would not be tolled.* It would still be up to the employee to file a claim within two years of the alleged date of injury. Of course, if the employee never submitted the bill of the private physician to his employer for payment, the statute would not be tolled.

Therefore, the mere treatment by a physician, whether private or company physician, provides no notice of the existence of an industrial injury. Even if the employee is treated by a private physician, the employee must still

notify his employer of an alleged injury by presenting and justifying that bill to his employer for payment.

Similarly, mere treatment by a company physician at a company dispensary does not place the employer on notice that an industrial injury is alleged. The company physician is there to treat employee maladies whether or not they are job related.

The employee who receives treatment from a company physician is in no better or worse position than the employee who receives care from a private physician. Both must take steps to notify their employer of the occurrence of an industrial injury in order to toll the statute of limitations. One files a claim, the other files a bill.

Although there may be a procedural difference in how the two classes toll the statute, this difference is wholly justified since it is based upon the rationale of providing proper notification to the employer.

The statute in question is a statute of limitation. Generally, the purpose of such a statute is to provide the employer or state agency with notice of an injury so that prompt medical attention can be secured and so that the circumstances of the accident can be investigated. Volume 3, *Workmen's Compensation Law,* Arthur Larson, paragraph 78.30.

This appellee believes that the Ohio Legislature did not act arbitrarily in requiring that an employee meet the reasonable requirements of notice contained in the statute. These requirements do not discriminate between classifications since both require the employee to provide his employer with adequate notice of an alleged injury. Whatever procedural differences do exist are wholly justified by this legitimate state interest of providing such notice. There can be no substantial federal question presented under these circumstances.

For these reasons, and for the additional reasons set forth in co-appellee's Chrysler Corporations Motion to Dismiss, this appellee, Kenneth Krouse, respectfully submits that this Court should grant this Motion to Dismiss Appellant's Appeal.

Respectfully submitted,

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Administrator of Bureau of
Workmen's Compensation